

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF
EDUCATION

012-12

John O. Craig

v.

East Providence School Committee

DECISION

Held: The Appellant has proven that his layoff from his position as Assistant Principal at East Providence High School was invalid on both procedural and substantive grounds. The School Committee failed to comply with R.I.G.L. 16-12.1-1 et seq. "School Administrators' Rights" in effectuating his layoff. The reason provided to him - "reorganization and based on seniority and certification"- did not support the School Committee's action once another, more senior, assistant principal resigned. At that point the Interim Superintendent could have implemented the reorganization plan as directed by the School Committee without Mr. Craig's layoff. The School Committee did not employ Mr. Craig pursuant to a written contract as required by the Board of Regents' Regulations Concerning the Employment and Duties of Principals and did not establish that his employment was "at will". The parties should confer to agree upon an appropriate remedy.

Date: July 25, 2012

Travel of the Case

Mr. Craig appealed a September 13, 2011 decision of the East Providence School Committee to Commissioner Deborah A. Gist on September 15, 2011. The Committee's decision upheld its prior action to lay him off from his position as Assistant Principal at East Providence High School effective June 30, 2011. The undersigned was designated to hear this matter on September 20, 2011 and the parties were at that time asked to confer to agree upon a date for hearing. Thereafter, the matter was scheduled and rescheduled for hearing several times at the request of counsel for one or both of the parties. It was finally heard on April 4, 2012, the transcript was received and closing memoranda submitted by both parties on June 15, 2012. The record in the matter closed at that time.

Jurisdiction to hear this matter arises under R.I.G.L. 16-39-1 and 16-39-2. We find that jurisdiction to hear this case also arises under R.I.G.L. 16-12.1-6.

Issue

Was John Craig's layoff from his position as Assistant Principal at East Providence High School valid?

Findings of Relevant Facts

- John O. Craig was hired by the East Providence School Committee on July 1, 2008 as an Assistant Principal at East Providence High School. His duties in this position encompassed oversight of school discipline for a portion of the student body and acting as a liaison to school organizations and the school athletics program. Tr. pp. 62, 65.
- During the time he was employed by East Providence, Mr. Craig did not have an individual contract and there was no group contract between the School Committee and the East Providence Association of School Principals. A prior contract between the School Committee and the Association had expired at the end of the 2008 school year. App. Ex. E; Tr. p. 43.

- On May 24, 2011 the East Providence School Committee voted to approve Phase I of a comprehensive Reorganization Plan that provided, in part, for a reorganization of staff at the High School and the elimination of several positions, including one assistant principal position. The Committee directed that the Assistant Principal to be laid off was to be determined on the basis of seniority and certification. App. Ex. A; Tr. pp. 25-26, 29.
- When Edward Daft was appointed as Interim Superintendent in late June of 2011 he immediately sought to implement the Reorganization Plan. On June 23, 2011 he presented a recommendation to layoff two assistant principals¹ at East Providence High School “due to the reorganization and based on seniority and certification”. His recommendation was approved by a vote of the School Committee at its June 23, 2011 meeting. Joint Ex.2; Tr. pp. 22-26.
- Mr. Craig received a letter the day before the School Committee’s meeting (June 22, 2011) from Interim Superintendent Daft informing him that a recommendation for his “layoff” would be presented to the School Committee on June 23, 2011 and that his layoff would be effective at the close of the 2010-2011 school year.² The day after the School Committee Meeting (June 24, 2011) Mr. Craig received a letter informing him that the School Committee had approved this recommendation, and that his layoff would be effective on June 30, 2011. App. Ex. C and D. Tr. pp. 32-34.
- On or about June 29, 2011 the Assistant Principal who was on a one-year leave of absence (Jennifer Roy) indicated that she would not be returning to East Providence and was resigning her position. She confirmed this information in an email to the Interim Superintendent dated June 30, 2011. Tr. pp. 26-27; App. Ex. B.
- On June 30, 2011 Interim Superintendent Daft directed that the position left vacant by Ms. Roy’s resignation be advertised. The Assistant Principal who had been laid off along with Mr. Craig applied for, and was selected to fill, this position.³ Her appointment as Assistant

¹ The other assistant principal who was laid off had been hired at the beginning of the 2010-2011 school year to fill in for an assistant principal who was on a leave of absence from her position at East Providence High School and working in North Kingstown. Tr. pp. 23-25. The assistant principal on the one-year leave of absence had more seniority than Mr. Craig.

² Mr. Craig testified that he did not recall receiving the June 22, 2011 letter from Mr. Daft. Tr. pp. 65-67. Mr. Daft clearly recalled hand delivering the June 22, 2011 letter to Mr. Craig in the Principal’s office on the day prior to the June 23, 2011 School Committee meeting. Tr. pp. 32-34.

³ Mr. Craig did not apply for the assistant principal position that was advertised. The reasons for this are not entirely clear on the record, but the record also evidences that during the period of time the district was

Principal was approved by the East Providence School Committee at a meeting on July 28, 2011. App. Ex. B. Tr. pp. 30-31.

- After a hearing before the East Providence School Committee on August 25, 2011, the members of the Committee voted to “reaffirm their decision” to accept the recommendation of Interim Superintendent Daft to layoff John Craig due to reorganization changes. The written decision of the School Committee, dated September 13, 2011 notes that “There is no contract of employment with Mr. Craig, and his status with the East Providence School Department is and was that of an at will employee without a contract. Joint Ex. 1.
- The school year for administrators in East Providence and for administrators generally starts on July 1st and ends on June 30th. Tr. pp. 34, 50.

Positions of the Parties

Appellant

Through his counsel, Mr. Craig submits that his layoff was invalid under applicable legal and equitable principles. Counsel emphasizes that Mr. Craig’s “layoff” had nothing whatsoever to do with job performance, as Interim Superintendent Daft affirmed at several points in his testimony. The reorganization of staff at East Providence High School that purportedly resulted in Mr. Craig’s “layoff” was totally driven by the School Committee’s approval of the Reorganization Plan. The directive from the School Committee was that the one Assistant Principal to be removed according to the Plan would be the least senior person. As the district proceeded to implement the plan, however, Mr. Craig’s position was unnecessarily eliminated. The School Committee’s action came at a point in time in the “administrative” school year when job openings for administrators had for the most part already been filled. Counsel for Mr. Craig points out that notwithstanding the specific mandate he had been given from the School Committee, the Interim Superintendent proceeded to effectuate Mr. Craig’s “layoff” even after the resignation of another assistant principal made this action unnecessary. Mr. Craig’s seniority was disregarded in the process.

seeking to fill this position, Mr. Craig was actively challenging the validity of his layoff. A letter dated July 19, 2011 sent to Mr. Daft by Mr. Craig’s attorney requested a full hearing before the School Committee regarding his termination. App. Ex. F. Tr. pp. 70-72.

The resignation of Jennifer Roy on June 30, 2011 effectively made Mr. Craig the second most senior Assistant Principal at the High School where two such positions were being maintained going forward under the Reorganization Plan. At that point in time it became obvious that Mr. Craig's "layoff" was not necessary in order to reduce the number of assistant principals from three to two and, counsel submits, he should have been recalled. Instead, Interim Superintendent Daft proceeded to advertise and fill the position vacated by Ms. Roy even though he was aware that Mr. Craig was challenging the validity of his layoff and had requested a full hearing. On July 28, 2011 the School Committee approved Mr. Daft's recommendation to re-hire the same person who had worked alongside Mr. Craig as an Assistant Principal at the High School the year before and who had also been laid off. This individual had less seniority than Mr. Craig. At the time the School Committee issued its final decision on the issue of Mr. Craig's layoff after a hearing held on August 25, 2011, it continued to assert that his layoff was "due to reorganization changes". The evidence clearly demonstrates, however, that the adoption of the Reorganization Plan, together with the sequence of events that followed, did not require that John Craig be laid off nor did it permit a less senior person to be retained in his place.

The second argument advanced on Mr. Craig's behalf is that the district should be equitably estopped from terminating John Craig's employment as Assistant Principal because he was not provided with adequate notice. Counsel for the Appellant disputes the notion that Mr. Craig was an "at will" employee who had no right to a reasonable period of advance notice that his employment was not going to be continued. Mr. Craig had no written contract that described the district's obligation to give him advance notice that his employment would not continue into the next "administrative" school year because the East Providence School Committee was in violation of Board of Regents' Regulations⁴ that require a written contract to be in place for all Principals and Assistant Principals. The Commissioner would, in effect, sanction this violation of Regents' Regulations by permitting East Providence to give Mr. Craig, a dedicated administrator at the High School, seven (7) days notice that his employment was coming to an end. The timing of the School Committee's action was such that the hiring season for administrators had come to a close, and predictably, Mr. Craig was not successful in securing another position for the upcoming school year, despite his best efforts to do so. If Mr. Craig had received a more timely notice that he was

⁴ The Board of Regents' Regulations cited by the Appellant's counsel are the "Regulations Concerning. The Employment and Duties of Principals" adopted on July 23, 1998.

to be laid off, he could have actively sought another position throughout the Spring. As it was, he reasonably relied on the district's silence in this regard- a silence that persisted for a full month after the Reorganization Plan was adopted on May 24, 2011. Under these circumstances, an implied contract should be deemed to exist that would provide Mr. Craig with a right to reasonable notice that he was to be laid off at the end of the 2010-2011 school year.

Counsel notes that the contract that had been in effect between the East Providence School Committee and the East Providence Association of School Principals from 2002 through 2008 continued to be followed in many respects by both parties. The Interim Superintendent testified that the East Providence School Committee historically operates under many of its policies and protocols in making personnel decision regarding administrators. The Appellant argues that the parties allowed some aspects of their relationship to be governed by contract. Based on this, there is an implied contract which should be deemed to provide Mr. Craig, and other East Providence school administrators, with reasonable notice that their employment is going to be terminated.⁵

Finally, the Appellant submits that a "layoff" of an employee purported to be an "at will employee with no contract" is an action that is not contemplated in the Administrators' Bill of Rights. If it were permitted under this statute, it would constitute a termination for cause which, under the statute (R.I.G.L. 16-12.1-2.1) includes, but is not limited to, "declining enrollment or consolidation". Thus, the district would have the burden to prove that Mr. Craig's layoff was based on its purported need to consolidate positions and it has not met the burden in this case. Again, the evidence is that implementation of the Reorganization Plan did not require that Mr. Craig be laid off.

For the foregoing reasons, the Appellant requests that the September 13, 2011 decision of the School Committee be reversed and that Mr. Craig immediately be reinstated with full back pay.

East Providence School Committee

The memorandum submitted by counsel for the School Committee describes the factual context in which the decision to lay off John Craig was made. A carefully-thought out

⁵ Interim Superintendent Daft testified that it was his understanding that school administrators in East Providence, as well as in other districts, were at-will employees and could typically be "let go at any point". Tr. pp.49-50.

Reorganization Plan recommended by then-Superintendent Dr. Mario Cirillo was designed to create a more efficient organization with a focus on teaching and learning. The Reorganization Plan reflected the reality of limited resources and called for a better utilization of resources to ensure increased student achievement. The Plan required the elimination of one of the Assistant Principal positions at the High School. Because three Assistant Principals' positions were being reorganized into two positions, it was decided to send lay-off notices to the two least senior Assistant Principals. This included John Craig and another Assistant Principal filling the position of a person on leave. The newly-appointed Interim Superintendent provided Mr. Craig (and the other Assistant Principal) with a hand-delivered notice of his layoff recommendation that was presented and approved by the East Providence School Committee on the following day, June 23, 2011.

On June 30, 2011 when the Interim Superintendent received the resignation of Jennifer Roy, an Assistant Principal whose seniority had previously called for her to be one of the two Assistant Principals to be retained, he decided to advertize this position so that the district could get at a larger pool of qualified candidates. The restructuring had resulted in a reconfiguring of duties and assignments for the two remaining Assistant Principals, with the position vacated by Ms. Roy being allocated responsibility for curriculum and instruction. This position was advertised. The individual who had worked with Mr. Craig (and also been laid off) applied and was selected for the position. Mr. Craig did not apply for the position.

On August 25, 2011 the School Committee conducted a hearing regarding Mr. Craig's case and issued its written decision in the matter on September 13, 2011. The Committee's written decision reaffirmed its prior decision to accept the recommendation of Interim Superintendent Daft to layoff Mr. Craig due to reorganization changes. Mr. Craig did not have a contract with the East Providence School Department. There was no individual contract and the prior group agreement with the East Providence Association of School Principals (which includes Principals and Assistant Principals) had expired in 2008.

The statutory rights of school administrators are set forth in Chapter 12.1 of the General Laws, "School Administrators Rights". In enacting this provision, it was not the General

Assembly's intent to interfere with the discretion school committees must exercise in choosing administrators, nor was there any intent to grant administrators tenure. The purpose of the Act was simply to enable administrators to be informed of the basis or reasons for their suspension, dismissal, or non-renewal of their employment relationship, and to afford them an opportunity to be heard before the school committee.

The provisions of the statute that apply to the termination of an administrator (R.I.G.L. 16-12.1-2.1) should not be construed as interfering with the East Providence School Committee's right to allocate its limited fiscal resources to reorganize and restructure positions, and, as it did in this case, to reduce the number of Assistant Principal positions from three to two. Case precedent on the issue of "cause" for the termination of an administrator has recognized the flexibility and discretion that school committees must exercise in making these difficult decisions. It is clear that administrators do not attain tenured status in the districts in which they serve. The reduction in the number of administrative positions at East Providence High School was a legitimate cost-saving measure that resulted from the exercise of sound discretion by the members of the East Providence School Committee. Implicitly, the School Committee argues that Mr. Craig's layoff was necessitated by the Reorganization Plan that was adopted by the School Committee on May 24, 2011.

The Act also provides that prior to taking final action dismissing or not renewing the employment of an administrator, a school committee shall provide the affected administrator with a concise, clear written statement, privately communicated, of the basis or reasons for dismissal or nonrenewal and notification of the right to a prompt hearing, at the election of the administrator. (R.I.G.L. 16-12.1-3) The School Committee believes that 16-12.1-3 does not apply to Mr. Craig's case because he was not dismissed, nor was his contract not renewed because no contract existed. Assuming, *arguendo*, that 16-12.1-3 applies to Mr. Craig's situation, then the School Committee's "final action" occurred on September 13, 2011 (after his August 25, 2011 hearing) when its written decision was issued. This would mean that Mr. Craig's layoff would be effective as of September 13, 2011, rather than on the date previously specified, June 30, 2011.

Counsel for the School Committee submits that Mr. Craig's appeal should be denied because he had no contract of employment with East Providence and effectively he was an "at will" employee. The Administrators' Rights Act does not create tenure or a contract, and does not

prohibit the School Committee from reorganizing to reduce its administrative staff at the High School. The district notes that Mr. Craig did not even apply for the second position when it became available on June 30, 2011, instead applying for the Principal's position at the Middle School for which he was not selected.

DECISION

The East Providence School Committee's position is that it took valid "final action" with respect to John Craig's layoff on June 23, 2011 when it voted to approve the recommendation that he (along with another Assistant Principal with less seniority) be laid off effective at the close of the 2010-2011 school year, i.e. June 30, 2011. The Committee submits that if the procedural protections set forth in R.I.G.L. 16-12.1-3 apply to Mr. Craig's situation, (and they argue they do not) then alternatively its final action regarding Craig's case occurred on September 13, 2011 after Mr. Craig had been provided with a hearing and certain other procedural protections under the statute. We find that the facts of this case are such that the initial action of the Committee on June 23rd was defective from a procedural standpoint and the subsequent action on September 13, 2011,⁶ was invalid because the reason cited for his layoff was not accurate at that time. Even if one were to consider the two actions of the Committee as a single "final action" the fact remains that reorganization changes did not require that he be laid off. This was not accurate or true after a resignation on June 30, 2011 opened up the second Assistant Principal position for the second most senior Assistant Principal, John Craig.

The record demonstrates that John Craig's layoff on September 13, 2011 from an administrative position at East Providence High School was not "due to reorganization changes within the district for the 2011-2012 school year". This was the reason provided to him in the written notice he received on June 22, 2011 when he was informed that a recommendation for his layoff was to be made to the School Committee when it met on the following evening. It was the same reason cited on June 24, 2011 after the School Committee voted to approve the recommendation to terminate his employment, effective six (6) days later on June 30, 2011. "Reorganization changes" is identified as the basis for the Appellant's layoff in the written

⁶ We would note that there is no evidence that the East Providence School Committee voted again on the issue after it conducted the hearing on August 25, 2011 or prior to issuance of its written decision.

decision of the Committee dated September 13, 2011. This reason did not support Mr. Craig's layoff because at the time of the School Committee's "final action" pursuant to the School Administrators' Rights statute, changes brought about by the Reorganization did not require that he be laid off from his position. He could have been retained in the position that had become available when Jennifer Roy submitted her resignation on June 30, 2011, and this would have been consistent with the prior directive of the School Committee that any layoffs be controlled by seniority. Mr. Craig's seniority entitled him to this second Assistant Principal's position. The assertion that his layoff was due to reorganization changes is contradicted by the fact that an Assistant Principal position was advertised and filled by another person on July 28, 2011.

The School Committee argues in the alternative that it was not obligated to provide a hearing before making a valid decision because a hearing is required only when an administrator is "dismissed" "suspended" or "non-renewed". Mr. Craig had no contract and was, therefore, not "non-renewed". Therefore, valid "final action" approving his layoff was taken at the meeting on June 23, 2011. The record substantiates that at that point in time implementation of the Reorganization Plan **did** require Mr. Craig's layoff because there were two more senior administrators employed at the High School who were designated to retain their positions under the School Committee's directive.

Despite the School Committee's argument to the contrary, we find that procedural protections, including an opportunity for hearing, were protections to which Mr. Craig was entitled before final action on his "layoff" could be taken. We interpret the provisions of R.I.G.L. 16-12.1-3 to apply to situations in which an administrator is being "laid off" from employment with a school district. The School Committee apparently accepted this proposition as well when it proceeded to provide Mr. Craig with a hearing on August 25, 2011. Unfortunately, the hearing at that point in time was not meaningful because it was almost a month after the second Assistant Principal's position had been advertised and filled by another person. In any event, it is clear that the layoff on June 23rd was invalid because the School Committee members did not make their decision in accordance with statutory procedures.

The School Committee also asserts that Mr. Craig was "effectively" an "at will" employee because he had no contract of employment, either individually or as part of a collective bargaining agreement. (Memorandum of the School Committee at page 10) The record clearly demonstrates that the terms and conditions of Mr. Craig's employment were not contained in a written contract.

However, a substantial leap is required to a conclusion that, by virtue of this fact alone, he was an “at will” employee. The Interim Superintendent’s testimony was that this was his understanding but it appears to have been premised on the fact that administrators were working in East Providence without contracts. However, we find that there is no evidence that “at will” employment was the arrangement between the East Providence School Committee and its administrators in general or Mr. Craig in particular.

In fact the first mention of “at will” employment in the documentary evidence in this case is in the September 13, 2011 final decision of the School Committee. Prior written notices sent to Mr. Craig provided him with the reason for his layoff (reorganization changes) rather than an assertion that no reason was required because of the “at will” nature of his employment. One would expect some notice to an employee that his employment was “at will” (e.g. a letter of appointment or personnel handbook) prior to termination. Assuming for the sake of argument that the East Providence School Committee could have proceeded to create an “at will” employment relationship with its administrative employees,⁷ there is no evidence that it had done so with Mr. Craig.

In the absence of proof of the reason cited by the School Committee for its action,⁸ we must conclude that in addition to being in violation of the statute, Mr. Craig’s layoff was arbitrary and capricious. This finding is especially significant in light of the equitable estoppel argument advanced by the Appellant’s counsel. If the School Committee had effectuated Mr. Craig’s layoff because of reorganization changes, the equitable estoppel arguments, and in particular the prejudice to Mr. Craig caused by the timing of this action, would have to be weighed against the immediate need of the district to implement an administrative restructuring that would save money. Since Mr. Craig’s lay off was not due to the reorganization changes, his equitable estoppel argument is persuasive and, standing alone, would warrant the reversal of the School Committee’s decision to lay him off as Assistant Principal at East Providence High School.

⁷ Both the School Administrators’ Rights (R.I.G.L. 16-12.1-1 et seq.) and the Board of Regents’ Regulations Concerning the Employment and Duties of Principals (1998) lend more support to the proposition that school administrators in Rhode Island must be employed under written contracts and that they are entitled to be provided with a reason for their non-renewal, suspension, termination, or dismissal.

⁸ As indicated above, layoff “due to reorganization changes” is not substantiated in this record. The Interim Superintendent did describe in his testimony that there were other considerations that caused him not to recall Mr. Craig on June 30, 2011 and instead to advertise this position. There is no evidence, however, that the East Providence School Committee was presented with or considered any reason other than the one of which Mr. Craig had been formally notified.

For the foregoing reasons, the appeal is sustained. The parties are directed to confer to determine an appropriate remedy and if they cannot agree within sixty days from the date of this decision, the hearing will be reconvened.

For the Commissioner,

Kathleen S. Murray
Hearing Officer

Deborah A. Gist, Commissioner

DATE: July 25, 2012